IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2307 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANWAR SHAIKH @ SHAIKH ANWAR ISMAIL @ ANWAR ISMAIL SHAIKH

Versus

JOINT SECRETARY(COFEPOSA)

Appearance:

1. Special Civil Application No. 2307 of 2001

MR SA BAQUI for Petitioner No. 1

MS PJ DAVAWALA for Respondent Nos. 1 and 2

MR KT DAVE AGP for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. In exercise of powers conferred under section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA

Act' for short), Joint Secretary to the Government of India, vide order dated October 12, 2000, Annexure A to the petition, detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that in view of the involvement of the petitioner - detenu in smuggling activity, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of Foreign Exchange or with a view to preventing him from the a activity of smuggling goods, the detaining authority, found necessary to detain him.

3. On the basis of specific intelligence that Tetracycline would be imported by concealment in a container of wet dates at Mumbai, Officers of the Directorate of Revenue Intelligence (DRI), Zonal Office, Mumbai located and kept a discreet watch on Container No. CRXU-2230206 on its arrival from Dubai.

4. On June 7, 2000 the said DRI Officers of Mumbai opened and examined the said Container No. CRXU-2230206 in presence of two independent Panchas and in the presence of Hemant N Palan, Partner of Custom House Agent, M/s. Ajay Clearing Enterprises and the Container was found to contain 727 Yellow Colour Bags of wet dates bearing Markings "BK Dates, Best selected Dates, Zahdi Golden" with prints of Palm trees on both sides on the front and no marking on the other side of the bag. The said Container was also found to contain 60 light Yellow Coloured Plastic bags with no markings. On opening one such bag, it was found to contain yellow coloured powder in three plastic bags and these plastic bags contained a packing slip with the following details:

TETRACYCLINE HYDRO CHLORIDE (Non-Sterile Bulk),
Gross Weight - 28.2 Kgs., Net Weight - 25.0 Kgs.,
Mfg. Date - 1999-02, Exp. - 2003 - 02 Made in
P.R. China. SICHWAN PHARMACEUTICAL CO. LTD."

4. Officers of DRI recorded statement of Pravin Sheshappa Kotian, Hemant N. Palan and Ashok Purushottam Thakkar and they also searched the residential premises at 'Ashiana', Ist Floor, Ist Lane, Shahpur Mills Compound, Shahpur, Ahmedabad on June 7, 2000. They also searched the premises of one Pradeep K. Shah, Proprietor of M/s. Plus Point Enterprises, Ahmedabad and the statement of the petitioner under Section 108 of the Customs Act, 1962 was also recorded on the same day. On the basis of the aforesaid material, the detaining authority came to the conclusion that the petitioner is

involved in the activity of smuggling of goods and, therefore, by exercising powers under Section 3 (1) of the COFEPOSA Act, detained the petitioner.

5. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate direction or order quashing and setting aside the order of detention and to set him at liberty forthwith.

6. Though the petitioner has challenged the order of detention on various grounds, Mr. Baqui, learned advocate or the petitioner has restricted his arguments to the point of non-supply of legible copies of the documents relied upon by the detaining authority while recording the order of detention which has seriously prejudiced the right of the petitioner of making an effective representation to the concerned authority and on this ground alone, according to him, the petition deserves to be allowed. He, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

7. Mr. Baqui further contended that a co-detenu Pradeep K. Shah, Proprietor of M/s. Plus Point Enterprises, Ahmedabad for whom the container containing tetracycline hydro Chloride was imported has been released on the basis of the opinion given by the Advisory Board whereas another co-detenu one Kaushik Girdharlal Pandya on whose behalf Special Civil Application No.12101 off 2000 was filed for the similar relief has been set at liberty by this Court while vide judgment dated July 5, 2001. Therefore, according to the learned advocate for the petitioner, on the ground of parity also the petition deserves to be allowed and the petitioner may be set at liberty.

8. Ms. Davavala, learned counsel who appears for respondent Nos.1 and 2 has contested the petition by filing counter affidavit on behalf of respondent which is sworn by Somnath Pal, Joint Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi, and an attempt is made to justify the order of detention passed against the petitioner by denying the allegations made in it. Mr. K.T. Dave, learned AGP who appears for respondent No.3 has also made his submissions and urged to pass appropriate orders.

9. I have heard Mr. Baqui, learned advocate for the petitioner, Ms. Davavala, learned counsel for respondent

Nos.1 and 2 and Mr. Dave, learned AGP for respondent No.3. I have also perused the averments made in the petition and the documents annexed thereto and the impugned order at Annexure A.

10. Similar question arose before this Court in the case of Vikramsinh Pravinsinh Rana v. State of Gujarat and another, 1988 (2) GLH 414. In that case some of the pages of the judgment supplied to the detenu were not legible and the Division bench of this Court held that it would amount to non-communication of the grounds and it also adversely affected the petitioner's right of making effective representation to the concerned authority and, therefore, the order of detention was quashed and set aside. Applying the said principles to the facts of the present case, be it stated that some of the pages of the documents supplied to the detenu by the detaining authority, i.e., pages 39, 55, 57, 103, 136, 407, 410 and 612, are illegible. Admittedly those are relevant and vital documents. Therefore, constitutional safeguard of right of making an effective representation to the authority concerned as enshrined in Article 22 (5) of the Constitution is infringed and on this ground alone the petition deserves to be allowed.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)